

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

February 2004

UPPAC Action Upheld

Court appeals from UP-PAC decisions are rare. The most recent case may explain why.

In <u>Holden v. Watson</u> (2002), the U.S. District Court for the District of Utah threw out a case brought by the Utah Education Association on behalf of one of its members whose license was revoked.

UEA argued that Mr. Holden did not receive due process because UP-PAC "unlawfully combined its investigative, prosecutorial, advocatory functions, and administrative functions with its adjudicative functions" (Plaintiffs Amended Complaint). UEA went on to complain that UPPAC proc-

esses were "unlawful" and "unconstitutional."

UEA also complained that the rules of professional practice Mr. Holden was accused of violating were unconstitutionally vague and did not put Mr. Holden on notice that his actions (viewing pornography on his school computer and allowing students to handle a firearm he brought to school) were inappropriate.

UEA also argued that the members of the UP-PAC panel that heard Mr. Holden's case at an administrative hearing and the hearing officer were biased and/or incompetent.

The court disposed of the UEA arguments in

short order.

First, the court found no due process violations where Mr. Holden was granted a full evidentiary hearing, was represented by counsel, and offered nothing more than conclusory statements that those who heard the case were biased.

Second, the court was unimpressed with the argument that the standards are vague, noting that Mr. Holden's conduct "clearly could be characterized as unprofessional" (p. 20).

The court granted UP-PAC's motion for summary judgment on all counts and left little doubt about the appropriateness of UPPAC's procedures.

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UPPAC Cases of the Month

Educators have greater speech rights in school than their students, but there are limits. And some speech by educators can lead to disciplinary action.

In a case involving extremely disturbing speech by a teacher, the Second Circuit upheld the termination of a teacher who belonged to and advocated on behalf of the North American Man/Boy Love Association. The court noted that, although the teacher's activities occurred outside of school and involved his First Amendment associational rights, his rights were outweighed by the

disruption his off-duty affiliation would cause to both parents and students at the school. Melzer v. Board of Educ., 336 F.3d 185 (2003).

The Eighth Circuit has ruled that a teacher's testimony in a criminal trial could be used

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UPPAC CASES

- The State Board suspended the license of Louis Sylvester for three years for engaging in sexually explicit email conversations with a female student.
- The State Board accepted the Commission's recommendation that the license of Craig Fletcher be suspended for one year for inappropriate conduct with a student.
- The State Board accepted the Commission's recommendation to reinstate the license of Deann Heninger Johnson following an 18 month suspension.

Eye On Legislation

A bill sponsored by Rep. Marda Dillree, R-Farmington, garnered a few headlines prior to the session and is creating great confusion.

Rep. Dillree proposes creating another board for the sole purpose of governing charter schools.

The bill could resolve some of the issues school districts have raised about serving as a chartering entity. It also raises substantial state constitutional questions since the Constitution vests authority over all public schools in the state board of education.

The legislation also raises questions about whether charter schools

will continue to be held accountable to the same standards as all other public schools.

The current draft exempts charters, for instance, from numerous critical provisions, such as educator licensing, the Public Employee's Ethics Act, community council and school improvement plans, policies against detaining students, and SEOP and SEP requirements.

It leaves little incentive for experienced educators to apply at charter schools, exempting the schools from the Orderly School Termination Procedures Act, the Utah Protection of Public Employees Act, the Educa-

tor Evaluation law, and the Employees' Personnel Files law which gives educators the right to review any materials placed in their personnel files.

Charter schools would also be the only public entity exempt from the state's nepotism law.

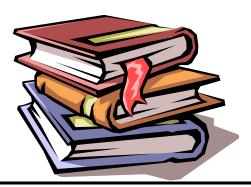
There are several other exemptions in the law, some of which raise other Constitutional issues and all of which, combined, tend to argue against the section of the charter law that claims the schools are part of the public education system. House Bill 152 is legislation to watch carefully.

Recent Education Cases

A Chicago teacher argued that his decision to publish six of the state's copyrighted tests was a fair use. The teacher argued that he used the tests in order to criticize the content and, therefore, his use was within the fair use exception to copyright law.

The 7th Circuit Court of Appeals disagreed, noting that the teacher published far more of the tests than was necessary for his purposes. The tests were developed by the

state board and reused from year to year. Allowing the teacher to pub-



lish the full tests would prevent the state from ever using the tests. Chicago Bd. of Ed. v. Substance, Inc. (C.A. 7 2004).

The Kentucky Supreme Court reinstated the wrongful death claim brought by the parents of a student killed in an alcohol-related car accident. The student had been decorating the school gym for prom.

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UPPAC cases

(Continued from page 1)

against him by the school district. In Padilla v. South Harrison School District, 181 F.3d 992, (1998), the court upheld the district's decision not to renew a teachers contract after the teacher testified on cross-examination at a criminal trial that he thought a sexual relationship with a minor student who had graduated or was at another school would be acceptable.

In a case that is somewhat more

representative of those UPPAC commonly deals with, a Louisiana court of appeals held that a teacher's inappropriate or vulgar language was sufficient grounds for dismissal of the teacher.

The court found that the seventh grade teacher's sexually suggestive example of storytelling techniques was clearly inappropriate even though it was subject to other, more innocuous, interpretations. The court stated "the School Board has a vested interest in ensuring its employees who come in direct and

daily contact with children are people of good moral character and influence. Ms. Williams clearly derogated from her responsibilities as a teacher by her actions in using profanity and reading . . . sexually suggestive material to her students." Williams v. Concordia Parish School

Board, 670 So. 2d 351 (La. App. 3Cir.



Utah State Office of Education

UPPAC Member Profile

In her own words, Lisa Simmons "is a happily married mother of three very precious and highly precocious children," ages 13, 8 and 4.

She is also an AP and applied English teacher at Springville High School and the current UPPAC chair.

Ms. Simmons originally planned to attend law school in her native Chicago and work as a child advocate. Instead, she earned her Bachelor degree in English Teaching, with a psychology teaching minor, and has been an advocate for children in the classroom since 1987.

Ms. Simmons has also coached students in basketball, volleyball, and swimming, and has assisted

her colleagues as a Peer Coach/ Mentor Teacher, Career Ladder Facilitator, Local Professional Improvement Committee member, Nebo Education Association representative and English Department chair.



Lisa Simmons

As a Commission member, Ms. Simmons feels privileged to work with "such wise and discerning colleagues of conviction and character. . . . to strengthen our teaching profession, support our fellow educators and improve the overall educational experience for everyone."

While she is "deeply saddened by the . . . suffering of students and teachers alike" in UPPAC cases, Ms. Simmons remains a committed advocate for both children and professional educators.

Your Questions

- Q: When a student threatens a teacher, can the teacher appeal the district's discipline decision?
- A: No. A teacher called and described a threatening situation at her school. A student had drawn a map of the school with his plan of attack against a principal and a teacher. The student described in writing how he would use a 9mm handgun, with a silencer to shoot his intended victims. The student was suspended for one day. A

What about the safety of teachers?

hearing was then held at the district with the student, his parents, a psychologist and the intended victims. The district decided to extend the suspension to five days.

A third teacher who had reason to believe she too was threatened by the student wanted to know what she could do if she felt the district had not done enough to protect the faculty from a specific threat.

The short answer is not much. The district has provided a full hearing for those directly involved and made a determination after giving both sides ample opportunity to present their cases. The teacher can work with her principal and the district to come up with some safeguards to make her feel more comfortable, but she can not appeal the district's ul-

Recent Cases Cont.

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Students openly consumed alcohol in the parking lot of the school during the school-sponsored activity. The court reinstated the claims against the state department of education based on the school's alleged negligent supervision of the students. Williams v. Kentucky Dep't of Educ., 113 S.W. 3d 145 (2003).

The U.S. Supreme Court refused to hear the appeal of a 3rd Circuit decision upholding the suspension of a kindergartener for proclaiming



"I am going to shoot you" to friends at recess. The student's comments followed

a one-week span in which three older students at the school were suspended for gun-related threats. The events also followed the fatal shooting of a 6-year old by a 6-year old at a different school.

The principal tried to reach the parents before suspending the student but could not find them. Despite the missing parents, there was no indication that the student did not understand the suspension and the decision to suspend was "a legitimate decision related to reasonable pedagogical concerns. The 3rd Circuit case is <u>S.G. ex rel. A.G. v. Sayreville Bd. of Educ.</u>, 333 F.3d 417 (2003).

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250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7830 Fax: 801-538-7768 Email: jhill@usoe.k12.ut.us





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Your Questions Cont.

(Continued from page 3) timate discipline decision regarding the student.

She could also enlist the education association as an advocate.

- Q: Can parents insist on a particular placement for their student?
- A: No, assuming there are no special education considerations.

In this scenario, parents were transferring mid-year from one Utah district to another. They insisted that their student needed

to be placed back one grade. The district did several assessments of the student and talked to her teachers in the former district. The district found no reason to place the girl back a grade but offered to review the situation at the end of the year.

The parents argued that they have the right to place their student in the grade level of their choosing.

Parents do not have that right. Where there is no IEP, courts across the country have routinely deferred to the expertise of school officials to determine the proper placements for students.

Schools do, however, consider

the parents' desires as well as other legitimate information.

Q: Can schools discipline a pregnant cheerleader under a code of conduct promoting "morality and good

character?"

A: We thought the education community had resolved this question decades ago, but it still comes up at least once a year. The cheerleader, lead in the school play, etc., can only be disciplined for being pregnant if the school also intends to locate and discipline the father-to-be (i.e., quarter-back, student body president, etc.). That also assumes the school knows the pregnancy is not the result of a traumatic situation, such as a rape or incest.

It is not permissible to discipline a student because she is pregnant. It is permissible to ask for a doctor's note stating that it is medically okay for her to participate in a particular physical activity.

We invite questions from educators at all levels!